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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

PR Docket No. 94-107

In re Petition of)
THE LOUISIANA PUBLIC SERVICE COMMISSION)
To Retain Existing Jurisdiction Over Commercial)
Mobile Radio Services Offered Within Louisiana)

To: The Commission

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REPLY COMMENTS OF CENTURY CELLUNET, INC.

Century Cellunet, Inc. ("Century") hereby submits its reply to oppositions and comments filed on the above-captioned petition of the Louisiana Public Service Commission ("Louisiana"). The Louisiana petition to retain rate regulatory authority over the provision of Commercial Mobile Radio Services ("CMRS") within the state of Louisiana was broadly opposed by virtually all sectors of the CMRS industry. As these carriers document, Louisiana has failed to provide any relevant evidence to support continued regulation under Section 332(c)(3)(A) of the Communications Act, as amended. Accordingly, Century requests the Commission to deny the petition forthwith and, consistent with Congressional intent, to foster development of a fully competitive CMRS marketplace.

In its original comments in this docket, Century opposed the Louisiana petition on the grounds that the petition did not identify any existing rate regulations that would be eligible for continuation under Section 332 and that, even if such regulations had been identified, the petition does not make the threshold burden of proof necessary to support an FCC order

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allowing continued regulation.¹ These comments were echoed by virtually all aspects of the CMRS industry, including paging carriers,² narrowband PCS interests,³ Specialized Mobile Radio providers,⁴ mobile satellite service providers,⁵ mobile trade associations,⁶ and cellular carriers.⁷

¹ Although not addressed in Century's initial filing, Century concurs with and supports Mercury Cellular Telephone Company's and Mobitel, Inc.'s request that the FCC issue a preemption order that "den[ies] the LPSC's request to continue regulating CMRS 'services rendered,' and to declare that the 'rate tariff filing,' 'technical capability,' and 'verification' aspects of the LPSC's existing registration requirements and 'proposed and/or existing rules' may not be employed, directly or indirectly, to hinder, delay or preclude CMRS market entry." Comments of Mercury Cellular Company and Mobitel, Inc. ["Mercury"] at 1-4. As these companies observe, authorizing continued entry regulation is not within the FCC's power, and clarifying the extent of Louisiana's authority in this regard may alleviate future conflicts. See also Opposition of McCaw Cellular Communications, Inc. ["McCaw"] at 17-18.

² See, Comments of AirTouch Paging, Inc. at 6-9; Comments of Paging Network, Inc. at 3-6.

³ See Comments of Mobile Telecommunication Technologies Corp. at 5-8.

⁴ Comments of E.F. Johnson at 5; Comments of Nextel at 14-16.

⁵ Comments of American Mobile Satellite Corporation at 4-7.

⁶ Comments of the American Mobile Telecommunications Association at 4-7; Opposition of the Cellular Telecommunications Industry Association ["CTIA"] at 6-12; Opposition of the Personal Communications Industry Association ["PCIA"] at 11-15.

⁷ Opposition of BellSouth Corporation ["BellSouth"] at 12-25, 27-29; Opposition of GTE Service Corporation ["GTE"] at 3-5, 12-23; McCaw at 18-20, 24-33; Mercury at 5-10. The only other cellular carrier filing was Radiofone, Inc. ["Radiofone"]. Radiofone has traditionally been the beneficiary of Louisiana's strict entry policies. Even Radiofone, however, objects to rate regulations and argues that cellular is, in fact, competitive. See Radiofone at 6-11.

As an initial matter, the comments show that the Louisiana petition is "fundamentally at odds with the basic framework adopted by the Commission in the Second Report and Order"⁸ and, implicitly, Congressional intent.⁹ Instead of fostering competition by ensuring that "similar services are accorded similar regulatory treatment,"¹⁰ Louisiana "proposes exactly the sort of regulation which Congress feared."¹¹ By discriminating between cellular radio services and other CMRS offerings, "Louisiana has in essence proposed to recreate . . . at the state level exactly the sort of asymmetrical regulation which led to the adoption of the amendments to Section 332 in the first place."¹² Thus, if the Commission permits Louisiana to continue its regulations, "[t]he result will be the antithesis of the 'regulatory parity' that Congress intended Section 332(c)(1) to establish."¹³

In addition, commenters demonstrate that Louisiana's market analysis "is based on erroneous factual premises, faulty economic reasoning, or unproved assumptions."¹⁴ For example, Radiofone notes that Louisiana suggests that similar rates are an indication that

⁸ McCaw at 5.

⁹ BellSouth at 5-11; GTE at 3-5; McCaw at 4-11; Mercury at 9-10; PCIA at 11-16.

¹⁰ H. Conf. Rep. No. 103-213 at 494.

¹¹ McCaw at 8.

¹² *Id.*

¹³ Mercury at 10 (citing H. Conf. Rep. No. 103-213 at 490).

¹⁴ McCaw at 15.

"carriers are engaged in 'conscious parallel pricing,' " instead of "vigorous competition."¹⁵

At the same time, however, Louisiana "asserts that if [two carriers] have different rates, they must be dividing the market."¹⁶ In effect, as noted by Mercury, "the LPSC has submitted only anecdotal evidence of a few isolated, past consumer complaints regarding cellular rates and bills," not the required showing "that current Louisiana cellular markets are characterized by widespread or significant unjust, unreasonable, or discriminatory rates."¹⁷ Indeed, as CTIA asserts, "a state desiring to regulate CMRS . . . must present the Commission with evidence which dictates a conclusion contrary to that reflected in the Commission's recent decision¹⁸ to forbear from interstate rate regulation.¹⁹ Louisiana has not done so here.

The comments, in fact, illustrate that cellular service in Louisiana is sufficiently competitive as to render cellular rate regulation by Louisiana unnecessary. Even Radiofone, which appears to support some continued regulatory oversight, concedes that "the CMRS

¹⁵ Radiofone at 5. In this regard, McCaw provides substantial evidence and argues persuasively that cellular carriers lack the ability to collude to set prices. McCaw at 26-27.

¹⁶ *Id.*; see also McCaw at 25.

¹⁷ Mercury at 6; see also BellSouth at 13-25.

¹⁸ *Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rod 1411 (1994). In that decision, the Commission concluded that "there is no record evidence that indicates a need for full-scale regulation of cellular or any other CMRS offerings." *Id.* at 1478, n.8.

¹⁹ CTIA at 10. CTIA goes on to note that "[s]uch a showing is very difficult, if not impossible, to make in view of the Commission's definitive conclusion that the CMRS market is competitive." *Id.*

market in Louisiana is very competitive."²⁰ McCaw, for its part, notes that Louisiana's petition "ignores declining prices for cellular service and the substantial recent growth in subscribership and investment by cellular carriers,"²¹ and specifically references the fact that its customers "have seen prices drop 20 percent in the last two years alone."²² CTIA asserts that cellular "has been characterized by rapidly increasing volume, declining prices, expanded service offerings, and significant technological change" -- attributes of a competitive industry²³ -- and submits a number of economic studies to support this conclusion.

Further, cellular carriers increasingly face substantial competition from other service providers. McCaw observes that Louisiana's determination that "there is no substitute for mobile cellular service . . . ignores the fact that the mobile telecommunications market is becoming increasingly competitive" with the entry of enhanced SMRs and digital PCS systems.²⁴ Indeed, as CTIA details in its pleading, existing CMRS providers currently offer a wide range of mobile services to compete with cellular, including advanced and wide area

²⁰ Radiofone at 6; *see also* GTE at 15-21.

²¹ McCaw at 3.

²² *Id.* at 23.

²³ CTIA at 14. CTIA also states that the high rate of intra-industry churn is further evidence of cellular competition. *Id.* at 15.

²⁴ McCaw at 24-25; *see also* GTE at 15; Radiofone at 7; Mercury at 8-9.

paging, SMR, enhanced SMR, wireless cable, traditional radio services, mobile satellite, BETRS, wireless facsimile and broadband video.²⁵

Finally, commenters have noted that the Louisiana petition suffers a fatal defect in that it seeks to "continue" regulations that were not "in effect on June 1, 1993."²⁶ Specifically, Louisiana appears to be implicitly requesting authority to "continue" rate-of-return regulations that are, at this time, only a proposal before the Louisiana commission.²⁷ However, as Mercury properly observes, "[t]here is no indication in Section 332(c)(3)(B) or its legislative history that the Congress intended to allow states to impose new and/or more stringent rate regulations upon CMRS providers."²⁸ As Century pointed out in its opening comments, Congress has established a separate procedure for petitions by states to *initiate* rate regulation of CMRS operators, which would govern the Louisiana proposal.

Louisiana's request to expand its regulatory authority to encompass rate of return regulation is especially pernicious in light of the fact that "[r]ate of return regulation is a methodology designed to address the problem of constraining market power exercised by monopoly utilities."²⁹ In a competitive market, like CMRS, rate of return regulation

²⁵ CTIA at 18-19.

²⁶ 47 U.S.C. §332(c)(3)(B). See, e.g., McCaw at 18-20.

²⁷ Radiofone at 11 (also noting that, because the regulations are only proposed, "the LPSC has not [complied with the procedural requirements of] identif[ying] and describ[ing] in detail the rules it would use for rate of return regulation").

²⁸ Mercury at 7.

²⁹ Mercury at 7 (citing *AT&T Price Cap Order*, 4 FCC Rcd 2873, 2908 (1989)) (emphasis added); see also BellSouth at 27-29.

"encourage[s] . . . inefficient investment decisions, incur[s] . . . unnecessary operating expenses, increase[s] incentives for cross-subsidization of competitive services, [creates] cost allocation problems, regulatory lags, and excessive administrative burdens and expenses for both regulated carriers and regulatory commissions."³⁰ Radiofone also notes that rate of return regulation in cellular "could lead to pricing distortion, including possible higher prices, and circumvent competition-driven investment."³¹ Thus, Radiofone concludes, "rate of return regulation of CMRS in Louisiana is not needed, and at worst, could harm competition in the CMRS market."³²

It is critical that the Commission act promptly to reject Louisiana's ill-founded efforts to impose rate regulation on CMRS operators. If the Commission delays resolution of this matter and Louisiana continues with its pending regulatory proceeding, substantial costs will be imposed on carriers and their customers. The competitive marketplace and the public interest will be better served by a quick, definitive dismissal or denial of the Louisiana petition.

³⁰ *Id.* Indeed, Century fully agrees with BellSouth that Louisiana's past efforts at regulation have imposed unnecessary burdens on both Louisiana and the carriers it regulates without significant benefits to consumers. See BellSouth at 22-23.

³¹ Radiofone at 8 (citing *Cellular Resale Policies*, 6 FCC Rcd 1719, 1725 (1991)). CTIA agrees that such regulation would be burdensome for consumers, asserting that, "cellular rates in states that regulate cellular prices are approximately five to fifteen percent higher than rates in states free from regulation." CTIA at 13.

³² Radiofone at 11.

In view of these circumstances, Louisiana's petition should be summarily rejected. The commenters have shown that, in addition to a number of other defects,³³ the petition fails to provide the substantive showings that would support continued rate regulation. Accordingly, the FCC should act rapidly to deny the petition and bring consumers in Louisiana the full benefits of CMRS competition on a level regulatory playing field.

Respectfully submitted,

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³³ See, e.g., McCaw at 28-29 (noting Louisiana cannot justify regulation of CMRS based on its need to ensure universal service); McCaw at 29-33 (discussing Louisiana's failure to submit evidence to show that regulation would benefit consumers and noting the substantial cost of proposed regulations).

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October, 1994, I caused copies of the foregoing "Reply Comments of Century Cellunet, Inc." to be mailed via first-class postage prepaid mail to the following:

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